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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Bell Atlantic Telephone Companies for Forbearance from Regulation as Dominant Carriers in Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York; Pennsylvania; Rhode Island; Washington, D.C.; Vermont; and Virginia.	)	CC Docket No. 99-24

AT&T OPPOSITION

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March 18, 1999

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AT&T OPPOSITION

Pursuant to the Commission's Public Notice, DA 99-224, released January 21, 1999, AT&T Corp. ("AT&T") hereby opposes the Petition of the Bell Atlantic Telephone Companies ("Bell Atlantic Petition"), filed January 20, 1999.

INTRODUCTION AND SUMMARY

Bell Atlantic has petitioned the Commission pursuant to Section 10 of the Telecommunications Act of 1996 (47 U.S.C. § 160) to forbear from certain aspects of dominant carrier regulation with respect to special access services. Specifically, Bell Atlantic requests the Commission to forbear from applying (i) the rate structure rules in Part 69 and the rate level rules in Part 61; and (ii) the tariff filing rules, so that Bell Atlantic can file tariffs on one day's notice without cost support, in each of the following jurisdictions: (1) Delaware; (2) Maryland; (3) Massachusetts; (4) New Hampshire; (5) New Jersey; (6) New York (including the Greenwich, Connecticut service area); (7) Pennsylvania; (8) Rhode Island; (9) Washington, DC; (10) Vermont; and (11) Virginia.[1]

Section 10(a) of the Act requires the Commission to determine that a request for forbearance satisfies three criteria:

> (1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations, by, for or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) Enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) Forbearance from applying such provision or regulation is consistent with the public interest.

Under Section 10(b), the Commission must also find that the proposed relief will "promote competitive market conditions" and "enhance competition among providers of telecommunications services."[2] Bell Atlantic's Petition clearly fails to satisfy these statutory requirements.

First, the Bell Atlantic Petition conflicts with the Commission's policies favoring a market-based approach to access charge reform, and thus the Commission cannot find it in the public interest. Moreover, Bell Atlantic's assessment of the competitive landscape for special access services in the states identified in its Petition is fundamentally erroneous. As discussed herein, Bell Atlantic has not shown that it lacks market power. A critical study that it relies on to make this claim is not even

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1 Bell Atlantic Petition at 2-3.

2 47 U.S.C. § 160(b).

attached to its Petition. And the material it does attach largely makes claims about the amount of market share competitors could gain in the future, not what they have today. While estimating future market share is not even the appropriate inquiry, Bell Atlantic's assumptions about the investment required to expand widely misses the mark. The appropriate inquiry is Bell Atlantic's current market share, which is obviously best derived by examining how much special access services AT&T and other carriers must still purchase from Bell Atlantic. As discussed herein, AT&T still purchases the lion's share of its high capacity services in all of the identified states from Bell Atlantic.

The Commission cannot conclude that forbearance is appropriate in the absence of market competition sufficient to constrain Bell Atlantic's conduct. Bell Atlantic has failed to show that there is such a competitive market. In light of Bell Atlantic's continued market dominance, it is clear that it does not, and cannot, satisfy Section 10's three part test for forbearance.

Additionally, it is noteworthy that although Bell Atlantic is seeking new forms of pricing flexibility, it is not even fully utilizing the considerable pricing flexibility the FCC has already given Bell Atlantic for its high capacity services. Certainly Bell Atlantic should use the competitive tools the Commission has already given it before asking for new ones.

For these reasons, AT&T requests that the Commission deny the Bell Atlantic Petition.

ARGUMENT

I. BELL ATLANTIC HAS NOT SHOWN THAT IT LACKS MARKET POWER IN THE SPECIFIED STATES

Bell Atlantic has not shown that most -- or even a sizable proportion -- of the high capacity customers in the states identified in its Petition enjoy fully effective competition in the provision of their high capacity services. Because such customers are unprotected from Bell Atlantic's monopoly power over access, deregulation such as Bell Atlantic now seeks would clearly be harmful to their interests and, at least equally important, to the public interest.

Bell Atlantic's assertion that it lacks market power is not credible. Bell Atlantic rests its claim on the findings of a Quality Strategies study that it does not even attach to its petition and on a Demonstration of Competition document that purports to enumerate all of the competitors with special access market share within the relevant states. As a result of its analyses, Bell Atlantic claims that it lacks market power because 90% of its special access customers allegedly have a competitive alternative available through an array of competitive facilities. Neither of these analyses is persuasive.

As to the Quality Strategies study -- which purports to show that competitors have captured 30% of Bell Atlantic's overall special access market and 50% of that market in the central business districts of the region -- the fact that Bell Atlantic failed to produce the study should be dispositive. Without the ability to evaluate the methodology employed by Quality Strategies, there is simply no way to assess the reliability of the results. It should be noted, however, that two other RBOCs – US West and SBC – previously filed petitions for forbearance that similarly relied on studies by Qualitative Strategies. AT&T demonstrated that those studies were severely flawed, for a number of reasons, including that: (1) neither relied on revenue loss as a measure of market share loss; and (2) one of the studies measured retail, not wholesale, market share loss.[3]

While Quality Strategies' methodology here is unknown, it is clear that it, at least in part, similarly examined loss of retail market share. In discussing the Quality Strategies study, Bell Atlantic's affiant, Michael R. McCollough, claimed that, where Bell Atlantic provides facilities on a wholesale basis to reseller "for all practical purposes, Bell Atlantic has lost these customers."[4] Retaining the wholesale business, however, is not equivalent to losing market share to a facilities based competitor. By providing the wholesale business, Bell Atlantic obviously continues to receive a substantial revenue stream from these customers. Moreover, as long as Bell Atlantic retains monopoly control over the wholesale service, it has the ability to price squeeze its retail competitors.

Indeed, even where Bell Atlantic faces competition from facilities based providers of special access services for a particular customer, Bell Atlantic does not lose all of that customer's business. Where AT&T uses an alternative access supplier, for example, in most cases the CLEC provides the connection from AT&T's POP to

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3 E.g., Petition of the SBC Companies For Forbearance From Regulation as a Dominant Carrier for High Capacity Dedicated Transport Services in Specified MSAs, CC Docket No. 98-227, AT&T Opposition at 4-5 (Jan. 21, 1999); In re Petition of US West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, CC Docket No. 98-157, AT&T Opposition at 5-6 (October 7, 1998).

4 Bell Atlantic Petition, Attachment B, ¶ 22.

the nearest Bell Atlantic wire center, but Bell Atlantic still provides the connection from its wire center to the customer's premises. Thus, while competitors may handle some of the transport, the overwhelming majority of special access service is still handled by Bell Atlantic. In addition, in these cases, the multiplexing functionality required to complete the circuit is handled by Bell Atlantic. In the end, then, Bell Atlantic still gets the lion's share of the revenue associated with the access expenditures related to the provision of service to that end user.

Bell Atlantic's Demonstration of Competition document, which enumerates competitors and their respective operations, is likewise severely flawed for a numbers of reasons. First, Bell Atlantic includes in its list of competitors a number of companies that have not yet entered the states at issue. For example, it relies on the following companies that merely have plans to enter the following markets, but are not yet serving customers:

Company	State
Level 3	Washington, DC; New York
Teligent	Washington, DC
AT&T	New Hampshire
MFN	Washington, DC; Philadelphia
Connectiv	Delaware, Maryland
Vitts	New Hampshire
Allegiance	Maryland, New York
Nextlink	New York
Intermedia	Boston, Pennsylvania
RCN	Boston

Bell Atlantic also includes companies that are just now completing their build plans in certain cities, such as e.spire in Washington, DC and Local Fiber in New York. While all of these competitors represent potential competition, they do not affect Bell Atlantic's market power today and are therefore irrelevant to Bell Atlantic's

Petition. Bell Atlantic also relies on potential rival technologies, such as self provisioning VSAT, cable telephony and microwave access technologies, as evidence that it lacks market power.[5] But few of these technologies are deployed and thus do not now affect Bell Atlantic's market power.

Further, Bell Atlantic's claims about the amount of percentage growth of fiber miles and the number of collocations that competitors have misses the mark. First of all, assuming that Bell Atlantic's assertions about the number of wire centers in which there are collocations are correct, collocators are present in only about 15% of Bell Atlantic's central offices.[6] Second, Bell Atlantic's claims about the number of route miles in competitors' networks are substantially exaggerated because Bell Atlantic appears to include route miles that are used to provide switched access services instead of special access services. Including such numbers obviously skews the results in Bell Atlantic's favor and overstates the number of route miles that are used for the special access services for which Bell Atlantic seeks relief. In any event, while Bell Atlantic touts the fact that competitors have 725,000 fiber miles (a number that is assumed, but not known, to be correct),[7] Bell Atlantic itself has about 4,366,000 fiber miles,[8] so CLECs still have only a fraction of the fiber miles owned by Bell Atlantic.

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5 Attachment B, ¶ 21.

6 Bell Atlantic states that there are collocators in 370 of its wire centers, Bell Atlantic Petition at 6, but it has a total of 2,390 wire centers in its regions.

7 Bell Atlantic Petition at 6.

8 See Statistics of Communications Common Carriers, Table 2.10, 1997 Edition.

Bell Atlantic's attempt to attach significance to the fact that the fiber growth rate has been much higher for CAPs, than for the BOCs, is misguided. Percentage growth rates will naturally look large when the fiber of small start-ups is compared with Bell Atlantic's vast fiber inventory. A CLEC that starts with two strands of fiber and adds another two strands, for example, has a 100% growth rate, while the addition of two strands of fiber to Bell Atlantic's inventory would have a miniscule effect on Bell Atlantic's inventory. In any event, fiber growth does not translate into market share loss for Bell Atlantic, because the high capacity market generally has been growing significantly in the recent years.[9]

More fundamentally, Bell Atlantic's analysis that CLECs can easily address 90% of Bell Atlantic's market[10] is severely flawed. Bell Atlantic assumes that any area in which a CLEC has facilities is "accessible" by that CLEC, either by

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9 What fiber growth the CLECs have experienced has been concentrated in urban areas. While Bell Atlantic claims that special access customers make purchasing decisions on a statewide basis and can use the buying power they have in the urban market in order to receive price reductions in special access services statewide, Petition at 9, this claim is flawed. As Professors Ordover and Willig demonstrate, removing price regulation across the state on the basis of competition in a few urban areas would allow Bell Atlantic to maintain prices above competitive levels in areas of the state not subject to effective competition and to deter entry in others that would otherwise be subject to competition. Declaration of Janusz A. Ordover and Robert D. Willig (the "Ordover/Willig Decl."), annexed hereto as Exhibit A, at ¶¶ 26-29. Indeed, the Commission has already rejected the use of state-wide geographic markets for exchange access. See MCI-WorldCom Merger Order, CC Docket 97-211, ¶ 166 (1998); BA-NYNEX Merger Order, File No. NSD-L-96-10, ¶¶ 54-56 (1997).

10 Bell Atlantic Petition at 1.

connecting to the customer directly or providing service through a collocation arrangement. That is not the case.

Possession of either a fiber ring or collocation equipment in a given area does not mean that a CLEC can serve all of the customers in that area. Facilities-based CLECs typically serve customers residing along their fiber rings, which limits the reach of competitive penetration to those buildings within that area. None of the CLECs identified in the Petition has built networks to cover the entirety of the urban areas listed in the Petition, much less the entire states.

Bell Atlantic's answer -- that competitors can easily serve any customer within 2000 feet of the competitor's network for an investment of $6,200 (or about $3 a foot)[11] -- misses the mark by a wide margin. Bell Atlantic's calculation includes only the cost of fiber extension, and apparently nothing else. There are, however, a number of other expenses associated with gaining access to a particular building. For example, establishing a connection into a new building requires the CLEC to conduct extensive negotiations with the landlord to permit the use of their risers, laterals, building entrances, and telephone closets. Although to the best of AT&T's knowledge Bell Atlantic is not asked to pay fees for such connections, an increasing number of landlords are demanding such payments from CLECs.[12] These requested payments are

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11 Bell Atlantic Petition at 6.

12 See AT&T Comments, September 14, 1998, at 48-52, in Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146.

often outrageous -- some landlords are even requesting to be paid a percentage of the CLEC's total revenues. Additionally, the CLEC must make arrangements to connect its existing fiber through new rights-of-way into the building, which may entail crossing public or other rights of way and consequent negotiations with other parties and permitting expenses. Moreover, these are a host of other costs that were not considered by Bell Atlantic, such as riser access costs, the cost of renting common space, construction costs, core drilling expenses and others. In a city like New York, including these expenses would bring the total investment per building to a much more realistic estimate of $250,000 per building or about $125 per foot.[13] Finally, the cost of the electronics to terminate a fiber connection into a new building means that such connections are not economically viable unless the CLEC can foresee a significant amount of traffic from that building. Dedicating four fibers (which is usually required to wire a building) to a location that only produces a modest amount of traffic will not be an economically feasible arrangement, which further limits the number of locations to which CLECs can directly extend their fiber networks.

Bell Atlantic's alternative assertion -- that CLECs can expand through collocation arrangements -- is equally baseless. The Commission is well aware of the difficulties that competitors have had collocating in incumbents' central offices -- not the least of which are cost constraints and the unavailability of collocation space.[14]

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13 This estimate is conservative. If additional electronics are needed to support the expansion, that expense could add another $65,000 per building.

14 In the Bell Atlantic-South states, for example, Bell Atlantic has focused its energies on seeking requests for exemptions from the physical collocation requirements, while at the same time resisting alternative collocation arrangements (such as shared collocation or cageless collocation arrangements).

(footnote continued on next page)

Moreover, even where collocation is available and financially feasible, collocation would not eliminate reliance on essential BOC facilities. Bell Atlantic would still, in most cases, control the connection between the central offices where the competition is located to the customer's premises, and will often have to provide facilities between the collocated space and the CLEC's switch or to some other meet point between the CLEC switch and the collocated space.

In light of these flaws, it is unsurprising that Bell Atlantic's actual market share is much higher than its submission suggests. AT&T still purchases the overwhelming majority of its special access services from Bell Atlantic. Indeed, in the states at issue, AT&T purchases 88% of its special access services from Bell Atlantic.

(footnote continued from previous page)

> It has filed exemption requests in all seven of the Bell Atlantic-South jurisdictions. In Delaware, Bell Atlantic withdrew its request following a Commission-supervised site inspection in which, among other things, it was discovered that one of the offices had several unused storage closets/areas that were either vacant or filled with Christmas decorations. See Affidavit of Patricia Boyle in Support of AT&T Communications of Virginia's Response in Opposition to Bell Atlantic-Virginia's Supplemental Application, In re Application of Bell Atlantic-Virginia, Inc. for Exemption from Physical Collocation, PUC 960164 (Oct. 22, 1998) (discussing Delaware inspection). And in all of the Bell Atlantic-South states, Bell Atlantic has resisted providing access to its floor plans, making it harder for CLECs (and state regulators) to verify its claims of space constraints. Moreover, in many of the states, Bell Atlantic determines collocation pricing on an individual case basis, so it is impossible to forecast expenses associated with collocation.
>
> In New York, completed collocation facilities have often not been operational nor adequately tested when provided to the CLEC. For example, in collocation cages provided in January of this year, Bell Atlantic failed to provide the amount of cabling requested by AT&T and TCG in their collocation applications. In addition, Bell Atlantic has not been willing on a timely basis to add trunk groups to serve collocated facilities requiring additional trunk capacity.

By state, the percentages are as follows: Delaware: 93%; District of Columbia: 80%; Maryland: 91%; Massachusetts: 92%; New Hampshire: 100%; New Jersey: 94%; New York: 82%; Pennsylvania: 86%; Rhode Island: 98%; Vermont: 95% and Virginia: 84%.[15] These figures demonstrate unequivocally that Bell Atlantic retains market dominance over special access services.

Indeed, AT&T has only been able to transition these modest percentages of its high capacity expenditures to other carriers despite its policy to search actively for alternative sources of supply to the BOCs.[16] For this reason, Bell Atlantic's repeated references to the fact that AT&T and MCI/WorldCom have affiliates with local fiber networks[17] are also misplaced. Obviously, AT&T's affiliation with TCG has not meant that AT&T has migrated all of its services to TCG. Indeed, TCG supplies a very small percentage of AT&T's demand for high capacity services.[18] In fact, AT&T recently *increased* the amount of special access services that it commits to purchase over the next year under Bell Atlantic's Commitment Discount Plan. Whether a CLEC affiliated with an IXC or not, it can only provide competing services

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15 These figures were derived based on an analysis of AT&T's expenditures for Type 1 Special Access services.

16 The modest levels of penetration by competitive carriers in the MSAs at issue stands in stark contrast to the inroads made by competitors in truly competitive markets, such as the interLATA market.

17 E.g., Bell Atlantic Petition at 13, 20, 30.

18 Indeed, in the states at issue, TCG can only currently supply AT&T with a small fraction of its demand for special access services: it currently only provides 10% of AT&T's demand for DS3s and 6% of AT&T's demand for DS1s, and only 4% of AT&T's expenses for special access services are paid to TCG.

where its facilities are located, and the CLECs in the states at issue have obtained direct connections to only a tiny proportion of the customer locations.[19]

In addition to difficulties associated with getting the facilities in place to meet existing demand, Bell Atlantic has taken steps to prevent competitors from rapidly taking away its customers. Bell Atlantic's high capacity rates already feature large term discounts, coupled with substantial termination liabilities. Customers seeking low cost services and lacking competitive alternatives thus find themselves locked into long term agreements that they cannot exit. For example, under the Commitment Discount Plan that AT&T subscribes to in the former NYNEX states, AT&T would incur a $151 million termination liability if it were to pull all of its traffic from Bell Atlantic's facilities. Similarly, under the Term Discount Plan applicable in the Bell Atlantic-South states, a $154 million termination liability would be imposed.

Finally, Bell Atlantic's pricing strategy throughout its territory is not consistent with a competitive marketplace. Bell Atlantic's rates have been relatively flat for the past several years, and DS1 rates in the Bell Atlantic–South states have actually increased by about 3% over the last several years. Moreover, Bell Atlantic's transport rates are barely below the price cap for those rates.[20] Bell Atlantic's rates also significantly exceed those offered by other CLECs within Bell Atlantic's territory. Indeed, for DS1s, CLEC special access rates are 22% to 35% below Bell Atlantic's rates and 24% to 35% below Bell Atlantic's prices for DS3s.[21]

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19 See also Ordover/Willig Decl. at ¶¶ 16-17.

20 See infra pp. 18-19.

21 See also Ordover/Willig Decl. at ¶ 25.

Accordingly, the Commission can give no credence to Bell Atlantic's claim that its competitors are capable of promptly serving even a small portion of its existing high capacity services in the states at issue, much less a majority of those services. The reality is that the competitive market in the states listed in the petition is not sufficiently robust to constrain anti-competitive behavior by Bell Atlantic.

II. BELL ATLANTIC'S PETITION DOES NOT SATISFY THE THREE-PART TEST FOR FORBEARANCE UNDER SECTION 10

In order to satisfy the first prong of the three part test under Section 10 of the Act, Bell Atlantic must show that application of the Commission's price cap, tariffing and rate averaging rules is not necessary to ensure that Bell Atlantic's rates and practices are just, reasonable and not unreasonably discriminatory. These rules are unnecessary only where a carrier does not possess market power. As demonstrated above, that is clearly not the case here. Bell Atlantic still has substantial market power in all of the states identified in the petition.

Because Bell Atlantic possesses such market power, it has the ability and incentive to charge unjust and discriminatory rates. The Commission's regulations, thus, must be applied to protect against this result. Without the tariffing requirements, for example, customers would not be able to challenge potentially unlawful rates before they become effective. And Bell Atlantic already has substantial freedom under the Commission's zone density pricing rules and price cap rules to deaverage rates in more competitive zones and to adjust its rates. As discussed below, Bell Atlantic has not even taken full advantage of this permitted flexibility. To eliminate the remaining requirements in the face of Bell Atlantic's continued market power would significantly increase the risk of unlawful and discriminatory rates.

Bell Atlantic's retort -- that customers will still be able to file a complaint under Section 208 to determine if its rates were unreasonable or unjustly discriminatory[22] -- is absurd. Not only would any relief that a carrier get in a complaint proceeding be prospective only,[23] but given the current demands on the Enforcement Division, a competitor could not expect to get relief for a number of years after the filing of a complaint.

Nor has Bell Atlantic satisfied the second prong of the Commission's three part test: it is clear that regulation of Bell Atlantic's high capacity services is necessary to protect consumers. Without regulation, Bell Atlantic could discriminate against certain customers by charging higher rates to those who do not have competitive alternatives and lower prices to those who do.

It is also clear that Bell Atlantic cannot show that forbearance under these circumstances is consistent with the public interest. Because it retains overwhelming market power, competition will not constrain anti-competitive conduct by Bell Atlantic. Thus, the public interest would be harmed, not benefited, by forbearance. Moreover, long distance carriers, by necessity, rely heavily on high capacity services by Bell Atlantic. Given Bell Atlantic's desire to compete in the long

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22 Bell Atlantic Petition at 10.

23 See In the Matter of Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, 12 FCC Rcd. 2170, at ¶¶ 8, 24 (Jan. 29, 1997).

distance market, it should not be given regulatory flexibility while it still controls a monopoly input for that service.

In particular, the public's interest in effectively competitive local exchange and access service markets would be harmed if Bell Atlantic's Petition were granted. Bell Atlantic has made no attempt to show that it has satisfied the market opening requirements contained in section 251(c) of the Act (and indeed, it could not make such a showing).[24] Deregulating Bell Atlantic's high capacity services in the states at issue would provide Bell Atlantic with another incentive to avoid complying with its statutory obligation to open its monopoly by giving it the alternative of obtaining targeted pricing flexibility where it is needed to crush limited competitive inroads by CLECs. This in turn, will discourage possible competitors from investing the sunk costs needed to enter the market.

Bell Atlantic's proposal also conflicts with the Commission's "market based" approach to access reform, and therefore contravenes the public interest. The Commission has relied on the existence of competition to bring about reduced access rates for customers in general, rather than reductions for only a select or narrow market

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24 In this regard, it is significant that Bell Atlantic relies on its inability to offer a differentiated package of services because it cannot provide interLATA services as support for its Petition. See Bell Atlantic Petition, Attachment C, Affidavit of Karl McDermott and William E. Taylor, ¶ 30. The obvious problem with this argument is that granting forbearance will not alleviate the problem about which Bell Atlantic complains. More importantly, if Bell Atlantic would actually comply with its Section 251(c) and the other obligations under the Act that are necessary for obtaining 271 relief, it, like its competitors, could also offer interLATA services.

segment.[25] If Bell Atlantic is permitted to further deaverage access rates and target reductions to a limited group of large business customers, it would have little, if any, incentive to lower access prices for the vast majority of customers. Indeed, granting the relief that Bell Atlantic requests will only motivate it to provide targeted deep discounts where it is subject to an active competitive threat. Because the access market is characterized by prices that greatly exceed costs, the main objective of regulation ought to be to reduce prices to all customers rather than to a small subset of individual customers.[26] Bell Atlantic's piecemeal approach, however, is contrary to this objective.[27]

III. BELL ATLANTIC HAS FAILED TO UTILIZE THE PRICING FLEXIBILITY THAT THE COMMISSION ALREADY ALLOWS

The Commission already has provided LECs like Bell Atlantic with a wide variety of pricing options that can be used in offering high capacity services. Given that Bell Atlantic is now requesting substantial new pricing flexibility, one would presume that it has exercised the full measure of the pricing options the Commission has already

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25 Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges, First Report and Order (CC Docket Nos. 96-262, 94-1, 91-213, 95-72), FCC 97-158, 12 FCC Rcd. 15982 (released May 16, 1997), ¶¶ 258-274.

26 See Comments of AT&T to Update and Refresh the Record, In re Access Charge Reform, CC Docket 96-262 (filed October 26, 1998), and Janusz Ordover and Robert Willig, "On Reforming the Regulation of Access Pricing" (Attachment A thereto).

27 In the access reform proceeding, the Commission is currently considering whether to expand the range of access pricing generally. Bell Atlantic's request should be considered, if at all, in the context of that larger proceeding.

extended to it, before seeking even more. The fact of the matter is, however, that Bell Atlantic has not done so.

LECs have the ability to file rates that are below their price caps and to geographically deaverage their rates under the FCC's zone density pricing rules. Bell Atlantic's transport rates are barely below the price cap. Currently, its transport services are priced only at $28,000 below cap, out of a transport services revenue base of over a billion dollars. Moreover, Bell Atlantic's transport rates are not geographically deaveraged.

Thus, Bell Atlantic has not taken full advantage of the pricing flexibility currently available to it. Moreover, its pricing strategy is inconsistent with its claim that it is facing increased competition and therefore must have additional flexibility to reduce prices. Indeed, the public interest would be better served if Bell Atlantic were to use the freedom it has to lower rates across the board for all customers than if Bell Atlantic were permitted through forbearance, to target only those customers which have competitive alternatives.[28] In light of this, Bell Atlantic's claims that it has a pressing need for even broader authority are unfounded.

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[28] See also Ordover/Willig Decl. at ¶ 30.

CONCLUSION

The Bell Atlantic Petition suffers from numerous methodological and factual flaws, and fails to meet the legal standard for forbearance. Accordingly, it should be denied.

Respectfully submitted,

AT&T CORP.

By ______________________

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March 18, 1999

Exhibit A

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Delaware; Maryland; Massachusetts;	)	
New Hampshire; New Jersey; New York;	)	
Pennsylvania; Rhode Island;	)	
Washington, D.C.; Vermont; and Virginia.	)	

DECLARATION OF JANUSZ A. ORDOVER AND ROBERT D. WILLIG

I. QUALIFICATIONS AND SUMMARY OF CONCULSIONS

A. Professor Ordover

1. My name is Janusz A. Ordover. I am Professor of Economics at New York University, which I joined in 1973. At New York University, I teach undergraduate and doctoral level courses in industrial organization economics, which is the field of economics concerned with competition among business firms and upon which "antitrust economics" is founded. I have devoted most of my professional life to the study and teaching of industrial organization economics and to its application through antitrust law and policy.

2. In July, 1991, I was appointed by President George Bush to the position of the Deputy Assistant Attorney General for Economics in the Antitrust Division of the United States Department of Justice ("DOJ"). In this post, I participated in the drafting of the 1992

Horizontal Merger Guidelines, which have been widely used by courts and antitrust enforcement agencies. I returned to New York University in 1993.

3. I have written extensively on a wide range of antitrust and telecommunications topics, such as mergers and joint ventures, predatory conduct and entry barriers. My antitrust articles have appeared in the *Yale Law Journal*, the *Harvard Law Review*, the *Columbia Law Review*, and many other journals, monographs and books, here and abroad. A full list of my articles and other professional publications and activities is presented in my *curriculum vitae*, which is attached as Exhibit 1.

4. I have lectured extensively on antitrust topics to the American Bar Association, the International Bar Association, and the Federal Trade Commission ("FTC"). I recently delivered lectures to the FTC during its hearings on the Future of Antitrust Enforcement, which were organized by FTC Chairman Robert Pitofsky. I have also lectured on antitrust policy at colleges and universities in the United States and abroad, and at many conferences and meetings sponsored by various legal organizations.

5. I have acted as a consultant on antitrust and other competition matters to the DOJ, the FTC, and the post-communist governments of Poland, Russia, and Hungary. I have also consulted for the World Bank and the Organization for Economic Cooperation and Development in Paris. I have acted as a consultant in numerous antitrust litigation and investigations, including market definition and anti-competitive conduct matters for the FTC,

Department of Justice and private clients in the United States, Australia, Germany and the European Union.

B. Professor Willig

6. My name is Robert D. Willig. I am Professor of Economics and Public Affairs at the Woodrow Wilson School and the Economics Department of Princeton University, a position I have held since 1978. Before that, I was Supervisor in the Economics Research Department of Bell Laboratories. My teaching and research have specialized in the fields of industrial organization, government-business relations and welfare theory.

7. I served as Deputy Assistant Attorney General for Economics in the Antitrust Division of the United States Department of Justice from 1989 to 1991. I also served on the Defense Science Board task force on antitrust aspects of defense industry consolidation. In addition, I have been a member of policy task forces under the aegis of the Governor of New Jersey and the National Research Council.

8. I am the author of *Welfare Analysis of Policies Affecting Prices and Products*; *Contestable Markets and the Theory of Industry Structure* (with W. Baumol and J. Panzar); and numerous articles, including "Merger Analysis, IO Theory, and Merger Guidelines." I am also a co-editor of *The Handbook of Industrial Organization*, and have served on the editorial boards of the *American Economic Review* and the *Journal of Industrial Economics*. I am an elected Fellow of the Econometric Society.

9. I have been especially active in both theoretical and applied analysis of telecommunications issues. Since leaving Bell Laboratories, I have been a consultant to AT&T, Bell Atlantic, Telstra and New Zealand Telecom, and have testified before the U.S. Congress, the Federal Communications Commission, and the Public Utility Commissions of about a dozen states. I have been on governmental and privately supported missions involving telecommunications throughout South America, Canada, Europe and Asia. I have written and testified on such subjects within telecommunications as the scope of competition, end-user service pricing and costing, unbundled access arrangements and pricing, the design of regulation and methodologies for assessing what activities should be subject to regulation, directory services, bypass arrangements, and network externalities and universal service. On other issues, I have worked as a consultant with the FTC, the Organization for Economic Cooperation and Development, the Inter-American Development Bank, the World Bank and various private clients. A full list of my articles and other professional publications and activities is presented in my *curriculum vitae*, which is attached as Exhibit 2.

II. ASSIGNMENT AND CONCLUSIONS

10. We have been asked by AT&T Corp. ("AT&T") to examine the economic analysis and the concomitant public policy conclusions contained in the Affidavit of Karl McDermott and William E. Taylor ("McDermott/Taylor Aff.") in support of the request by Bell Atlantic Corp. ("Bell Atlantic") that the Commission forbear from regulating Bell Atlantic's prices for its special access services in eleven states and the District of Columbia. It is our understanding that Bell Atlantic is requesting—and Messrs. McDermott and Taylor are

supporting—a total removal of price cap regulation for special access services in these jurisdictions.

11. We believe that granting Bell Atlantic's request would disserve the public interest. Bell Atlantic has not demonstrated that the market for special access has changed so that it is now subject to effective competition or that entry into that market is sufficiently easy that new competitors could prevent Bell Atlantic from sustaining a nontransitory price increase if Bell Atlantic's request were granted. McDermott and Taylor concede that there is little or no existing special access competition in many areas of the states in question. Although they claim that barriers to entry are low, McDermott and Taylor do not deny that for many special access customers today Bell Atlantic is the only viable supplier, or that there has been little entry outside urban areas. And, McDermott and Taylor make no attempt to demonstrate that market forces have, in fact, reduced Bell Atlantic's special access rates to the forward-looking economic cost-based levels that would prevail in competitive markets for special access.

12. Instead, McDermott and Taylor cite statistics that suggest that there may be more competition in the future. Perhaps so—as McDermott and Taylor point out, changing technology can change the economics of entry—but the prospect of possible future competition, either in active or potential forms, does little to support Bell Atlantic's request for complete deregulation today. As for today, McDermott and Taylor posit that large special access customers can use their "buying power" to leverage the price-constraining effects of competition in the limited areas where it exists to the many more areas where there is little or no competition. As explained below, however, competition in one area cannot be counted on to

provide an effective constraint on Bell Atlantic's exercise of market power in another area with respect to point-to-point special access services. In this regard, we understand that although the Commission's current price cap regulations give Bell Atlantic considerable flexibility to reduce rates, Bell Atlantic has instead maintained its special access rates at or near the maximum permitted levels.

III. CONDITIONS FOR REGULATORY FORBEARANCE

13. McDermott and Taylor claim that their conclusions favoring forbearance in the provision of special access follow the regulatory standard embodied in Section 10 of the Communications Act of 1934, 47 U.S.C. § 160. That section provides that the Commission may forbear from enforcing a regulation when the rates charged by the incumbent are "just and reasonable and are not unjustly or unreasonably discriminatory;" when enforcement of the regulation "is not necessary for the protection of consumers;" and when "forbearance . . . is consistent with the public interest." 47 U.S.C. § 160(a). To test whether forbearance is in the public interest, the Commission "shall consider whether forbearance . . . will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services." *Id.* § 160(b).

14. We agree with the Act's thrust that forbearance is in the public interest if in the absence of regulation, the incumbent cannot exercise undue market power, and if the absence of regulation will promote competition among the incumbent firms and also among efficient entrants. However, as we set forth below, McDermott and Taylor do not demonstrate that Bell

Atlantic would not be able to exercise market power. Nor do they show that absence of regulation would facilitate competition and provide correct entry incentives.

IV. THE EXTENT OF COMPETITION IN THE PROVISION OF SPECIAL ACCESS SERVICES

15. McDermott and Taylor correctly conclude that "forbearance from pricing regulation is appropriate when market power is lacking." McDermott/Taylor Aff. at 4. However, they adduce no empirical evidence that demonstrates that market forces currently constrain Bell Atlantic's ability to charge supra-competitive prices for special access or that Bell Atlantic's prices for special access are near the forward-looking, economic cost of providing those services.

16. Further, although we agree with McDermott and Taylor that the extent to which interexchange carriers ("IXCs") can vertically integrate and "self-supply" special access or otherwise purchase special access from competitive access providers ("CAPs") is highly relevant in principle to whether Bell Atlantic can exercise market power in the special access market, McDermott/Taylor Aff. at 4-5, 17-18, the available evidence on the extent of such bypass hardly supports a finding of no market power. We understand that, despite aggressive least cost purchasing practices, even AT&T and other large IXCs have been able to self-supply or obtain from CAPs only a small fraction of their special access services needs. Information developed by AT&T shows that even after its purchase of TCG, AT&T continues to purchase the overwhelming share of its access needs in Bell Atlantic's territory from Bell Atlantic. As set forth in more detail in AT&T's Opposition, AT&T currently purchases approximately 88 percent of its special access services from Bell Atlantic despite the fact that Bell Atlantic's rates

are well above cost. Indeed, we are informed that AT&T is currently negotiating a contract with Bell Atlantic for high capacity volumes that exceed the volumes AT&T purchased from Bell Atlantic last year. These additional purchases, we understand, are necessitated by growth in demand and the absence of broad-based alternatives rather than incentives and inducements offered by Bell Atlantic.

17. Moreover, it should be noted that competitive options, including self-supply, that may be available to a limited number of special access customers will not undermine Bell Atlantic's general market power over access services, in part because of an externality that exists in the market for access services.[1] Although self-supply or other options may in some circumstances be a feasible means of avoiding Bell Atlantic's charges for special access and for *originating* access, the calling party and its IXC do not control how the call is *terminated*. Rather, the customer being called chooses the carrier to terminate the call—and in almost all cases that carrier today is Bell Atlantic. Because the vast majority of the interexchange calls that originate in Bell Atlantic's region are also terminated by Bell Atlantic, self-supply by interexchange carriers could not fully constrain the prices paid for Bell Atlantic's access services.

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[1] B. Douglas Bernheim and Robert D. Willig, *The Scope of Competition in Telecommunications*, Working Paper prepared for the American Enterprise Institute for Public Policy Research, October 25, 1996.

18. Unable to demonstrate that price-constraining actual competition exists today, McDermott and Taylor suggest that *potential* competition constrains prices because barriers to entry are low. Again the available evidence suggests that McDermott and Taylor are not accurately apprised of current reality: notwithstanding rates that remain well above cost, little (and, in some cases, no) competitive entry has occurred in many areas. Although we are not in a position independently to evaluate the accuracy of Bell Atlantic's engineering assumptions, the analysis in AT&T's Opposition certainly suggests that Bell Atlantic's presentation understates the true level of costs that a new entrant would face. More fundamentally, although McDermott and Taylor may well be right that technological progress has *reduced* infrastructure costs, especially with regard to fiber optic cable, McDermott/Taylor Aff. at 12-15, the fact that Bell Atlantic has lost so little market share to new entrants—despite rates that are well in excess of cost—is strong evidence that barriers to entry and expansion remain high.

19. Here, it is also important to recognize that Bell Atlantic can engage in entry-deterring pricing strategies that leverage its existing, ubiquitous network. Bell Atlantic's incremental costs are likely to be far below the incremental costs of a new entrant because prior to entry, the entrant has incurred no sunk costs and the *entire* cost of providing service is incremental. By contrast, the costs of Bell Atlantic's ubiquitous network are largely sunk. Thus, Bell Atlantic can prevent entry by being able to credibly threaten to price above its incremental costs yet below the incremental costs of the potential entrant.

20. The attempt by McDermott and Taylor to infer the absence of entry barriers from the fact that over the past few years, fiber growth rates for CAPs exceeded those for the Regional Bell Operating Companies ("RBOCs") is likewise misguided. McDermott/Taylor Aff. at 13-14. Those growth rate figures mean little here in the absence of answers to two additional questions: *where* is this new CAP fiber being deployed and what are the relative bases upon which the CAP and RBOC growth rates were calculated. We understand that virtually all of the CAP fiber deployment is concentrated in urban areas. And McDermott and Taylor themselves point out that CAP fiber deployment, although growing rapidly, comprised *only* 13 percent of the total. *Id.*[2] Thus, the most that can be concluded from the fact that CAPs are installing fiber at a faster pace is that at some point the special access consumers with ready access to that fiber will have alternatives to incumbents' offerings. However, considered in context, the CAPs are still playing catch up to Bell Atlantic and other incumbents. In short, although the CAPs' growth rates indicate that entry to serve some customers is not entirely blockaded, they do not indicate that Bell Atlantic is now facing real competitive constraints in all of the relevant areas that could justify the removal of all regulatory constraints on its prices.

21. McDermott and Taylor's contention regarding "minimum efficient scale," McDermott/Taylor Aff. at 12, does not support their conclusion. What matters for entry is the minimum *viable* scale of the operations. The minimum viable scale is the volume of sales at

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[2] We also note that the data relied upon by McDermott and Taylor appear to include fiber deployed for switched access services. McDermott and Taylor make no attempt to measure the relative amounts of fiber deployed by CAPs relative to the RBOCs for special access. These

(continued . . .)

current prices that a firm must secure in order to cover its forward-looking costs. If McDermott and Taylor are correct regarding the downward trajectory of special access prices, it is entirely plausible that the minimum viable scale has increased relative to the scale of demand. Moreover, what matters for entry is not the total volume of demand but, rather, the volume of available demand. As AT&T notes in its Opposition, many Bell Atlantic customers are signed up on long-term contracts. Those customers are not readily available to a new entrant. We do not mean to suggest that long-term contracts in the provision of special access are necessarily anticompetitive, but it is important to note that the relevant markets are not as free of competitive frictions as McDermott and Taylor suggest.

22. McDermott and Taylor utterly fail to substantiate their assertion that prices are constrained by the fact that "business customers are highly elastic" and thus have "the power to move [their] purchasing power or money resources to among alternative suppliers on very short-term notice." McDermott/Taylor Aff. at 16. McDermott and Taylor base this claim about the importance and magnitude of elasticity of demand of business customers on the Commission's *First Interexchange Competition Order* and *Order on the Motion Of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*. But those orders addressed a different market: the interexchange market. We agree that business customers can quickly and readily change their long distance providers. That is because each business customer has access to a large number of suppliers, many of whom are facilities-based, and others who purchase

(. . . continued)
data also did not include fiber deployed by GTE Corp. and other large incumbent local exchange carriers.

wholesale minutes at competitive rates. Hence, each long-distance carrier, including AT&T, faces customers with highly elastic demand.

23. But purchasers of special access do not have the same plethora of alternative suppliers and are, therefore, not in a position to discipline any one supplier with a credible threat (or actuality) of switching demand to another carrier. In fact, as noted, the evidence from the special access market suggests that a large share of special access customers have only a limited choice of suppliers and that many have no choice whatsoever. Nor is there a vibrant resale market for special access services as there is for long distance services. Even the largest IXCs frequently must therefore rely on the infrastructure of incumbent local exchange carriers ("LECs") to complete a cost-effective special access arrangement. Thus, IXCs and business customers alike remain deeply dependent on the incumbent LECs for the provision of components of special access.

24. Similarly flawed is McDermott and Taylor's related claim, McDermott/Taylor Aff. at 18-19, that supply elasticity prevents Bell Atlantic from exercising market power. While elastic supply can in principle prevent the exercise of market power, the supply of special access services is actually relatively inelastic. As discussed above, barriers to entry are not insignificant. Likewise, while McDermott and Taylor claim there is excess capacity, they make no attempt to prove it. The table they rely on merely relates the change in the amount of fiber deployed by CAPS and RBOCs for switched and special access, and does not purport to measure even the amount of capacity deployed, let alone the amount of excess capacity. Likewise, McDermott and Taylor's references to Qwest's and MCI's network are inapposite as

these carriers largely use fiber cable to provide long distance services. Indeed, Qwest does not even hold itself out as providing access services in competition with Bell Atlantic.

25. In sum, McDermott and Taylor fall far short of demonstrating that Bell Atlantic's special access services' prices are currently constrained by actual or potential competition in all of the areas for which Bell Atlantic seeks forbearance of price regulation. Indeed, Bell Atlantic's own pricing conduct confirms that the public interest would be disserved by removing the remaining price cap regulation of Bell Atlantic's special access services' rates. In this regard, we understand that Bell Atlantic's rates have been relatively flat for the past several years, that DS1 rates in the Bell Atlantic-South states have actually *increased* in the last few years, and that Bell Atlantic's rates are consistently well above the service-band floors. It is also our understanding that Bell Atlantic has retained its high market share despite charging rates for special access services well above those of its competitors.

26. McDermott and Taylor claim that special access customers "make purchasing decisions on a statewide (or national) basis" and "can use the buying power they have in the urban market—where multiple suppliers (CAPS, competitive LECs and incumbent LECs) are played off against each other—in order to receive price reductions for special access services statewide." McDermott/Taylor Aff. at 7. This argument suffers from two independent flaws. *First*, Bell Atlantic's evidence that all or even the majority of multi-site customers are being served, or can readily be served, by "multiple suppliers" in major urban markets is far from persuasive. To the contrary, AT&T's analysis shows that Bell Atlantic has gone well beyond

actual competitors to support this claim, and has relied on possible potential competitors using unproven technologies such as VSAT and microwave access.

27. *Second*, and more fundamentally, McDermott and Taylor greatly exaggerate the constraint that competition in "urban areas" can exert on pricing in those parts of the state where there is no competition. An example is instructive. Assume a customer has two sites and needs a DS1 channel to each. One site is in an urban area where competition from multiple suppliers constrains rates to no more than $100/month, as compared to a monopoly rate of $150/month. The other area is served only by Bell Atlantic. Free of regulatory constraint, Bell Atlantic has an incentive to charge $100/month in the competitive area (or, perhaps, $99/month to beat the competition) and $150/month in the noncompetitive area. Because there is no alternative arrangement through which the customer can obtain better overall rates from another supplier—or combination of suppliers, such as Bell Atlantic in the noncompetitive area and a new entrant in the competitive area—the customer cannot make a credible threat to switch and thus has no "leverage" to force Bell Atlantic to reduce rates in the noncompetitive area.[3] Nor can the customer gain any leverage by requesting statewide flat-rate pricing. Bell Atlantic could then simply offer a contract rate of $125/month for each of the two DS1 channels. And again, no alternative suppliers could provide a better overall rate or undermine Bell Atlantic's ability to collect its monopoly rent.

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[3] McDermott and Taylor's claim that customers favor one-stop shopping, McDermott/Taylor Aff. at 17, actually undermines their argument. If that is true, Bell Atlantic—the only access provider that can provide facilities-based service to all sites—might be able to retain some customers even if its rate in the competitive area were slightly higher.

28. Further analysis on the basis of the assumptions made by Messrs. McDermott and Taylor concerning demand shows that, by virtue of its incumbency and ubiquity of service, a Bell Atlantic free of regulatory constraints may be able to deter entry without even lowering its rates below (possible) monopoly levels. To see how this could be accomplished, assume that some monopolistic portions of a state are presently unattractive to a potential entrant. This might be so because demand for special access in these parts of the state is not sufficiently high to warrant or support two special access providers. However, some other parts of the state could potentially sustain competition because demand is high enough to accommodate multiple vendors. Assume Bell Atlantic has sunk all the costs necessary to provide DS1s statewide, the incremental cost to Bell Atlantic of providing DS1 service is $10/month per site, and the monopoly price is $150/month per site. The entrant, however, must sink some costs to provide that service and would be willing to do so only if it faced some real possibility of recouping the investment on a forward-looking basis. However, Bell Atlantic can deter such an investment by offering customers who desire special access at two sites—one in a monopolistic part of the state, and the other in a potentially competitive part of the state—the following contract: "If you purchase services at one site from me at the market price, I will provide you with the second site at (incremental) cost." The prospect of such a Bell Atlantic offer can deter entry and maintain the price of special access at the monopoly level. This is because the entrant, who can only economically serve one site, realizes that if it enters, the incumbent is essentially committed to give away the service in the competitive area. Such an entrant cannot reasonably recover its sunk costs and may abstain from coming into the market. In this case, Bell Atlantic would be able to charge the total monopoly package price of $300 for two sites, and still entry would be foreclosed.

29. In short, removing price regulation across the state on the basis of competition in a few urban areas would allow Bell Atlantic to maintain prices above competitive levels in areas of the state not subject to effective competition, and possibly to deter entry in areas that would otherwise be subject to competition. McDermott and Taylor can argue otherwise only by making the unwarranted assumption that an entire state is a relevant geographic market, McDermott/Taylor Aff. at 6-7, notwithstanding the Commission's prior decisions rejecting use of state-wide geographic markets for exchange access and adopting "point-to-point markets" or markets of "discrete local areas." *See MCI-WorldCom Merger Order*, CC Docket 97-211, ¶ 166 (FCC 1998); *BA-NYNEX Merger Order*, File No. NSD-L-96-10, ¶54-56 (FCC 1997). In so arguing, McDermott and Taylor state that it is "not useful" to define the market in terms of point-to-point connections. But as they recognize, "the services in question are point-to-point connections, and a point-to-point connection cannot be transported from other parts of the region." *Id.* In other words, while some pockets of a state can exhibit vibrant competition in the provision of special access, other parts of the state may have no competition and even no real prospects of competition in sight. For example, competition in downtown Manhattan does not constrain prices in Buffalo, let alone Queens. In those parts of the state where competition has not yet taken root and is not constraining pricing, Bell Atlantic would be able to raise prices in the absence of a regulatory constraint.

30. McDermott and Taylor suggest that their definition of the relevant product market is nonetheless conservative in including only special access. They claim that "it is possible (and in some cases even probable) that other services also compete with special access." McDermott/Taylor Aff. at 5. No such competing alternatives are identified. We think

that it is entirely possible that in some cases switched access may compete with special access. However, inclusion of switched access into the relevant product market does not dilute Bell Atlantic's market share if only for the obvious reason that Bell Atlantic controls an even higher share of switched access than it does of special access. Moreover, the fact that switched and special access potentially compete does not lessen public policy concerns from forbearance—in fact, it only exacerbates them. The grant of forbearance in pricing special access would make it easier for Bell Atlantic to capture or retain more elastic customers who otherwise would have to be captured or retained with lower prices for switched access. As a result, competitive incentives for Bell Atlantic to lower switched access rates would be reduced, in direct contravention of the Commission's policies and the public interest.

V. CONCLUSION

31. In sum, none of the explanations offered by McDermott and Taylor as to why Bell Atlantic lacks market power are convincing. The available evidence suggests that the deregulation Bell Atlantic seeks would give Bell Atlantic the flexibility to raise prices (or maintain them at supracompetitive levels) in the many areas where it faces no effective competition. In our view, that would not serve the public interest.

VERIFICATION

I, Janusz Ordover, declare under penalty of perjury that the foregoing is true and correct.

Executed on March 17, 1999.

JANUSZ A ORDOVER

[NAME]

VERIFICATION

I, Robert Willig, declare under penalty of perjury that the foregoing is true and correct.

Executed on March 17, 1999.

Robert Willig

EXHIBIT 1

October 1998

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EDUCATION

1968-1973	Columbia University, New York, New York Graduate Department of Economics and European Institute of the School of International Affairs Doctoral Dissertation: Three Essays on Economic Theory, May 1973
1967-1968	McGill University, Montreal, Canada Departments of Economics and Political Science
1963-1966	Warsaw University, Warsaw, Poland Department of Political Economy

HONORS

1973	Columbia University: Highest distinction for the doctoral dissertation
1971-1972	Columbia University: Honorary President's Fellow
1969-1971	Columbia University: President's Fellow
1967-1968	McGill University: Honors Student
1964, 1965	Warsaw University: Award for Academic Achievement, Department of Political Economy
	Who's Who in the World Who's Who in America Who's Who in the East

PROFESSIONAL EXPERIENCE

June 1982 - present	Professor of Economics Department of Economics, New York University, New York, New York
Sept. 1996 - present	Director of Masters in Economics Program Department of Economics, New York University
Summer 1996- present	Lecturer International Program on Privatization and Reform Institute for International Development, Harvard University, Cambridge, Massachusetts

Professional Experience (continued)

Aug. 1991 - Oct. 1992	Deputy Assistant Attorney General for Economics Antitrust Division United States Department of Justice, Washington, D.C.
Sept. 1989 - July 1990	Visiting Professor of Economics School of Management and Organization, Yale University, New Haven, Connecticut
	Lecturer in Law Yale Law School
Mar. 1984 - June 1988	Visiting Professor of Economics Universita Commerciale "Luigi Bocconi", Milan, Italy.
June 1982 - Feb. 1985	Director of Graduate Studies Department of Economics, New York University
Sept. 1982 - June 1986	Adjunct Professor of Law (part-time) Columbia University Law School, New York, New York
Feb. 1982 - June 1982	Acting Director of Graduate Studies Department of Economics, New York University
June 1978 - June 1982	Associate Professor of Economics Department of Economics, New York University
Sept. 1979 - May 1990	Lecturer in Economics and Antitrust New York University Law School
Sept. 1977 - June 1978	Member, Technical Staff Bell Laboratories, Holmdel, New Jersey
	Associate Professor of Economics Columbia University
	Visiting Research Scholar Center for Law and Economics, University of Miami, Miami, Florida
Sept. 1973 - Aug. 1977	Assistant Professor of Economics New York University
Summer 1976	Fellow Legal Institute for Economists, Center for Law and Economics, University of Miami
Summer 1976	Visiting Researcher Bell Laboratories, Holmdel, New Jersey

OTHER PROFESSIONAL ACTIVITIES

1997 - present	Consultant Inter-American Development Bank, Washington, D.C.
1997 - present	Board of Editors Antitrust Report
1995 - present	Consultant The World Bank, Washington, D.C.
1995 - present	Senior Affiliate Cornerstone Research, Inc., Palo Alto, California
Fall 1995	Testimony, Hearings of the Federal Trade Commission "Anticipating the 21st Century: Competition Policy in the New High-Tech, Global Marketplace," Washington, D.C.
1994 - 1996	Senior Affiliate Law and Economics Consulting Group, Emoryville, California
1994 - present	Senior Affiliate Consultants in Industry Economics, LLC, Princeton, New Jersey
1993 - 1994	Director Consultants in Industry Economics, Inc., Princeton, New Jersey
1992 - 1993	Vice-Chair (*pro tempore*) Economics Committee, American Bar Association, Chicago, Illinois
1992 - 1995 1990 - 1991	Senior Consultant Organization for Economic Cooperation and Development, Paris, France
1991	Member *Ad hoc* Working Group on Bulgaria's Draft Antitrust Law The Central and East European Law Initiative American Bar Association
1990 - 1991	Advisor Polish Ministry of Finance and Anti-Monopoly Office Warsaw, Poland
1990 - 1991	Member Special Committee on Antitrust Section of Antitrust Law, American Bar Association
1990 - 1991	Director and Senior Advisor Putnam, Hayes & Bartlett, Inc., Washington, D.C.

Other Professional Activities (continued)

1990 - 1996	Member Predatory Pricing Monograph Task Force Section of Antitrust Law, American Bar Association
April 12, 1989	Witness Hearings on Competitive Issues in the Cable TV Industry Subcommittee on Monopolies and Business Rights of the Senate Judiciary Committee Washington, D.C.
1989	Member EEC Merger Control Task Force, American Bar Association
1988 - present	Associate Member American Bar Association
1987 - 1989	Adjunct Member Antitrust and Trade Regulation Committee, The Association of the Bar of the City of New York
1984	Speaker, "Industrial and Intellectual Property: The Antitrust Interface" National Institutes, American Bar Association, Philadelphia, Pennsylvania
1983 - 1990	Director Consultants in Industry Economics, Inc.
1982	Member Organizing Committee Tenth Annual Telecommunications Policy Research Conference, Annapolis, Maryland
1981	Member Section 7 Clayton Act Committee, Project on Revising Merger Guidelines American Bar Association
1980	Organizer Invited Session on Law and Economics American Economic Association Meetings, Denver, Colorado
1978 - 1979	Member Department of Commerce Technical Advisory Board Scientific and Technical Information Economics and Pricing Subgroup
1978 - present	Referee for numerous scholarly journals, publishers, and the National Science Foundation

MEMBERSHIPS IN PROFESSIONAL SOCIETIES

American Economic Association
American Bar Association

PUBLICATIONS

A. Journal Articles

"Parity Pricing and its Critics: Necessary Condition for Efficiency in Provision of Bottleneck Services to Competitors," with W. J. Baumol and R.D.Willig, *Yale Journal on Regulation*, vol. 14, Winter 1997, 146-63.

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"Economics and the 1992 Merger Guidelines: A Brief Survey," with Robert D. Willig, *Review of Industrial Organization*, vol. 8, 139-150, 1993. Reprinted in E. Fox and J. Halverson (eds.), *Collaborations Among Competitors: Antitrust Policy and Economics*, American Bar Association, 1992, 639-652.

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"A Patent System for Both Diffusion and Exclusion," *Journal of Economic Perspectives*, vol. 5, Winter 1991, 43-60.

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"Conflicts of Jurisdiction: Antitrust and Industrial Policy," *Law and Contemporary Problems*, vol. 50, Summer 1987, 165-178.

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A. Journal Articles (continued)

"A Sequential Concession Game with Asymmetric Information," with A. Rubinstein, *Quarterly Journal of Economics*, vol. 101, no.4, November 1986, 879-888.

"The G.M.-Toyota Joint Venture: An Economic Assessment," with C. Shapiro, *Wayne Law Journal*, vol. 31, no. 4, 1985, 1167-1194.

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"On the Consequences of Costly Litigation in the Model of Single Activity Accidents: Some New Results," *Journal of Legal Studies*, June 1981, 269-291.

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A. Journal Articles (continued)

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